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The meeting was called to order at 3.05 p.m.

Agenda item 148: Report of the United Nations Commission on International Trade Law on the work of its thirtieth session (*continued*) *(A/52/17)*

1. **Mr. Loibl** (Austria) said that the celebration of the thirtieth anniversary of the United Nations Commission on International Trade Law (UNCITRAL) as an occasion to stress once again the importance of the Commission' work and of the activities of its secretariat in disseminating the texts which it produced. The secretariat should continue to make use, to the extent possible, of outside resources such as non-governmental organizations and professional bodies. In the current context of budgetary restraint, Member States should offer their full support to the trade law branch.

2. The Model Law on Cross-Border Insolvency prepared by UNCITRAL was an important step forward in efforts to harmonize and progressively develop international trade law. His delegation stood ready to coordinate the preparation of a draft resolution expressing the General Assembly's appreciation of that text and inviting Member States to give favourable consideration to the Model Law when enacting or revising their laws.

3. The work of the Commission concerning the rapidly expanding area of electronic commerce was of the utmost importance to the future of commercial transactions and his delegation therefore welcomed the decision of the Commission to entrust the Working Group on Electronic Commerce with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. It also noted with satisfaction the progress made in the area of case law on UNCITRAL texts — such as the publication of three additional sets of abstracts with court decisions and arbitral awards, an essential step towards the uniform application of the legal texts drawn up by the Commission — and the decision of UNCITRAL to place a new search engine on its website which would facilitate searches of documents and decisions.

4. All the endeavours of UNCITRAL would be in vain if they were not accompanied by efforts to disseminate information on the legal texts the Commission had produced. In that regard, the training and technical assistance activities (regional and national seminars) undertaken by the secretariat were to be commended, although lack of resources had impeded the further development of such activities and greater participation by developing countries. It was encouraging to note, however, that the General Assembly had decided to include the Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL in the list of funds and programmes that were to be dealt with at the United Nations Pledging Conference for Development Activities. In the context of disseminating knowledge about the work of UNCITRAL his delegation regarded the Willem C. Vis International Commercial Arbitration Moot, held in Vienna in 1997, as an excellent method of teaching international trade law and disseminating information about the legal texts produced by the Commission. The increasing number of participating teams underlined the importance attached to it by both academics and practitioners.

5. The report of UNCITRAL on the work of its thirtieth session (A/52/17) met with the general approval of his delegation, which would follow with interest the preparation of a legislative guide on build-operate-transfer (BOT) projects and of a uniform law on assignment in receivables financing. His delegation sincerely hoped that Austria would be one of the countries re-elected by the General Assembly to fill vacant seats on the Commission at the end of 1997.

6. **Ms. Mohamed** (Kenya) said that in the three decades of its existence, UNCITRAL had had an impressive record of achievements in the unification and harmonization of international trade law. Indeed, at its thirtieth session, it had adopted its draft Model Legislative Provisions on Cross-Border Insolvency, which should facilitate judicial cooperation and provide better means for national courts to deal with cases of cross-border insolvency. Her delegation commended the Working Group on the high degree of cooperation it had demonstrated in seeking to produce a text which, to the extent possible, respected the different legal, social and economic traditions of States, while at the same time responding to the imperatives of a modern and efficient cross-border insolvency system. The contribution of non-governmental organizations, in particular the International Association of Insolvency Practitioners (INSOL), had been crucial to the production of a high quality text. Her delegation supported the decision taken by the Commission as to the form of instrument to be adopted and agreed that it would be preferable to evaluate the operational successes and weaknesses of the text before undertaking the drafting of a treaty on the subject.

7. UNCITRAL had broken new ground with its legislative guide on privately financed infrastructure projects. Many Governments and international organizations had already expressed keen interest; that appeared to indicate an urgent need for uniform legislative guidelines on that type of contract, which had become an increasingly important source of development funding in developing countries. It was of fundamental importance that an appropriate balance

should be maintained between the objectives of attracting private investment for infrastructure projects and protecting the interests of the host Government and the users.

8. Taking note of the report on the status of work of the two Working Groups of the Commission — on Electronic Commerce and on International Contract Practices respectively — she commended the former on the preparation of uniform rules on the legal issues of digital signatures and certification authorities and said she looked forward with interest to the completion by 1998 of work by the latter on the draft Convention on Assignment in Receivables Financing. Since her delegation believed that the programme of work of the two Working Groups was too ambitious, she suggested that the two Groups should be merged and that the number of sessions should be reduced to a maximum of three a year so that Governments would have enough time to consider the reports and comment on them.

9. Her delegation commended the untiring work of the secretariat of the Commission in undertaking training and technical assistance activities despite the lack of material, financial and staff resources. It appealed to the Commission to provide more funding for that type of activity in more developing countries and, at the same time, urged Governments and international organizations to make contributions to the Trust Funds established for that purpose.

10. **Mr. Haryono** (Indonesia), taking note of the latest progress that had been made in the various areas covered by the report of UNCITRAL (A/52/17), said that the Model Legislative Provisions on Cross-Border Insolvency should resolve many current problems caused by the application of diverse national laws, ensuring a certain level of uniformity and facilitating judicial cooperation and access to national courts by foreign administrators. The Model Legislative Provisions would also assist judges, legal experts and legislators in drawing up and applying, as appropriate, laws which would best respond to developments in that particular branch of law. As the Commission had stated, finalizing articles 14 to 17 of the draft Model Provisions (recognition of foreign proceedings and consequences of recognition) would facilitate agreement on other related matters, while a legislative text on international judicial cooperation required a high degree of uniformity and should include the requirement of reciprocity. For that reason, once the Commission had completed its work on the draft Model Legislative Provisions, it should give serious consideration to drafting a model treaty and to work on cross-border insolvency in the banking sector, the reorganization of insolvent enterprises, conflict-of-laws solutions in cross-border insolvency cases and the effects of insolvency proceedings on arbitration agreements and arbitral proceedings.

11. On the question of privately financed infrastructure project, he said that his delegation supported the preparation of a legislative guide on build-operate-transfer (BOT) projects since it would enhance confidence among national and foreign investors, protect public interests and help Governments to review and revise their legislation in a rapidly emerging field.

12. Equally important in the area of electronic commerce was the issue of digital signatures and certification authorities. In view of the important role played by public-key cryptography, his delegation was pleased to note that the Working Group on Electronic Commerce had decided to focus its attention on a highly technical field which required uniformity in the law, and would at a later stage address the issues of jurisdiction, applicable law and dispute settlement on the Internet.

13. His delegation attached great importance to the United Nations Decade of International Law, to which the training and technical assistance activities of UNCITRAL made a significant contribution. It believed that the seminars and briefing missions organized by the Commission were invaluable for promoting awareness of its work and for informing countries, particularly developing countries, of the need for the harmonization of international trade law. For that reason, his delegation welcomed the Commission's decision to continue to pursue such activities in 1998 in Asia, Africa, Latin America, the Caribbean and Eastern Europe. It also expressed appreciation to those States which had contributed generously to the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL. Lastly, it was pleased to note that the case law on UNCITRAL texts was now available on the Internet in the six official languages of the United Nations.

14. **Mr. Smejkal** (Czech Republic) noted that the latest session of UNCITRAL had been dominated by discussions concerning the draft Model Provisions on Cross-Border Insolvency. Those provisions were very practical, relevant and urgent for a world economy characterized by growing international trade and increasing internationalization of investments. In order to deal fairly with cases of insolvency, a legal framework was necessary which would promote international coordination and cooperation in recognizing foreign proceedings and allowing foreign administrators access to national tribunals. The draft provisions presented by the Working Group were on the whole very satisfactory. The Commission' decision to be pragmatic and opt for the model law formula while leaving open the possibility of

preparing a model treaty at a later date was understandable. The Czech Republic would certainly be guided by that new instrument in revising its own legislation in the area. His delegation also hoped that the Guide to Enactment of the Model Provisions would soon be available, although it would have been logical for the document to have been reviewed and approved by the Commission before being distributed.

15. Privately financed infrastructure projects, insofar as they mobilized private capital and thus reduced the State's role in financing infrastructure projects — thereby reducing fiscal pressure — were very useful but they required an appropriate legal framework to ensure conciliation and equal protection for public and private interests. For that reason the legislative guide on such projects, which the Commission had just prepared, was important. His delegation approved the guidelines given for future work, on the understanding that the guide must take into account the various existing legal systems.

16. His delegation was also encouraged by the Commission' intention to accelerate the work of the Working Group on International Contract Practices with a view to the preparation of a draft Convention on Assignment in Receivables Financing. Fully aware that some difficult questions remained, such as the effects of assignments on third parties, it nevertheless felt that the work must move ahead, given the potential positive effects, especially for the development of consumer credit and bank and financial establishment credit cards and for the cost of such types of credit.

17. As for the question of electronic commerce, he expressed satisfaction that the Commission had decided to undertake the preparation of uniform rules on the legal issues of digital signatures and certification authorities, and supported the guidelines given by the Commission to its Working Group in that area. He also noted with interest that the Commission intended to study certain legal aspects of Internet communications, especially questions of jurisdiction and conflict-of-laws issues.

18. The following session of UNCITRAL would be the appropriate time to commemorate the fortieth anniversary of the 1958 New York Convention and his delegation felt that some thought should be given to reviewing the international commercial arbitration scheme at the same time. In addition, as the General Assembly was about to select the new members of UNCITRAL, his delegation would like to point out that it hoped to participate in the work of the Commission as a full-fledged member.

19. **Mr. Chimimba** (Malawi), speaking on behalf of the countries of the Southern African Development Community, said that the adoption of the Model Law on Cross-Border Insolvency should be helpful in the establishment of the legal certainty necessary to promote increased trade and international investment. The countries of the Southern African Development Community looked forward to receiving the final version of the Guide to Enactment of the Model Provisions and agreed with the proposals concerning the future work of the Commission made in paragraphs 223 to 225 of the report (A/52/17).

20. As for privately financed infrastructure projects, the approach taken in preparing the draft legislative guide was satisfactory, and the countries of the Southern African Development Community looked forward to further development of the subject by the Secretariat. They wished to make it clear, however, that the proposals contained in paragraph 237 should be taken into account. They believed it would be useful to maintain an appropriate balance between the need to attract private investment for infrastructure projects, on the one hand, and to protect the interests of the host Government and the users of the infrastructure facility, on the other. The guide should concentrate on the core issues — issues which would foster investor confidence and protect public interests — and leave other less important details to be resolved in each contract on a case-by-case basis.

21. After emphasizing the importance of the work of the Working Group on Electronic Commerce, he said that the countries of the Southern African Development Community had been beneficiaries of the very useful UNCITRAL training and technical assistance programmes. They hoped that seminars similar to the one held in Pretoria on 3 and 4 March would be organized more regularly and they supported the Commission's repeated calls for increased assistance activities. They hoped that the General Assembly would maintain the same position and would respond to the concerns expressed by Member States, and by the developing countries in particular. He called upon all countries to contribute generously to the Trust Fund for Granting Travel Assistance to developing States Members of UNCITRAL so that the Commission could provide assistance with travel expenses to developing countries which were members of UNCITRAL. Some members of the Southern African Development Community had experienced difficulties in attending meetings because of financial constraints.

22. He also noted that during the past year meetings of the Commission and its Working Groups had clashed with other meetings of the United Nations and for that reason it had

been difficult for small missions to participate. He hoped that in future it would be possible to resolve such scheduling problems, in order to ensure universality of representation on the Commission. The same could be said of the staffing of the UNCITRAL secretariat.

23. **Mr. Syargeeu** (Belarus) commended the role played by UNCITRAL in international economic cooperation and the practical results it had achieved, and expressed satisfaction at the adoption of the Model Law on Cross-Border Insolvency, which had the merit of taking into account the special characteristics of national legal systems.

24. His delegation attached great importance to continued work on privately financed infrastructure projects and on electronic commerce. It looked forward to hearing the results of the colloquium and the international conference on that subject organized by the Organisation for Economic Cooperation and Development (OECD) and was ready to take part in the consideration of the Secretariat's report on that question.

25. As for the monitoring of the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitrage Awards (New York, 1958), he said that Belarus had prepared a draft law on arbitration. His delegation had replied to the questionnaire referred to in part VI of the UNCITRAL report (A/52/17) and invited all those States which had not yet replied to do so, especially since arbitration issues would be discussed on the occasion of the fortieth anniversary of the Convention.

26. UNCITRAL technical assistance was especially useful for countries with economies in transition which, like Belarus, were reforming their national legal system. Regional colloquiums and seminars should be organized and the participation of representatives of countries with economies in transition which wished to create market economies was essential.

27. In that connection, his delegation was in favour of including the UNCITRAL Trust Fund for Symposia in the agenda of the Pledging Conference organized during the session of the General Assembly, in order to meet the growing needs of the developing countries and the newly independent States in the area of training and technical assistance. It hoped that the United Nations Development Programme (UNDP), the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development would provide UNCITRAL with the necessary assistance in accordance with resolution 51/161 of the General Assembly (para. 9).

28. In its desire to submit to the rules of international trade, Belarus had signed the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995) and the Convention on the Limitation Period in the International Sale of Goods (New York, 1974). It had also undertaken to accede to the Convention on the Carriage of Goods by Sea and to various other instruments.

29. **Mr. Gao Feng** (China) welcomed the adoption of the Model Law on Cross-Border Insolvency, which was the result of a cooperative effort on the part of many countries including China. He hoped that the Guide to Enactment of the Model Law would soon be published.

30. The growing number of countries which had acceded to the UNCITRAL conventions testified to the real usefulness of the Commission's work and he hoped that its assistance and personnel training activities in the developing countries would be increased. He also requested that, when drafting conventions and model laws, UNCITRAL should make a greater effort to take into account the actual situation in different countries. It should also increase publicity for the legal instruments already adopted so that they would be accepted by even more countries and play a greater role in international trade.

31. **Mr. Kachurenko** (Ukraine) welcomed the adoption of the Model Law on Cross-Border Insolvency, which should make it easier to rescue financially troubled but viable businesses and to improve reorganizations or liquidations of debtors' assets. Those rules should prove acceptable to States with different legal and economic systems.

32. As for build-operate-transfer (BOT) projects, his delegation appreciated the progress made by the Commission, and he emphasized that BOT transactions could help States to attract investors for specific projects. Like many developing countries and countries with economies in transition, Ukraine believed that a balance should be kept between the objective of attracting private investment for infrastructure projects and the need to protect the interests of the host Government and the users of the infrastructure facilities.

33. His delegation believed that the legal framework for electronic commerce, should be based on the principle of contractual liberty. As for the preparation of the draft Convention on Assignment in Receivables Financing, it was to be hoped that the work of the Commission on outstanding issues would be completed promptly and would take into account the uncertainties in different legal systems.

34. After reviewing the various fields of activity of the Commission, all of which his Government considered to be

very important, he singled out training and technical assistance as activities which should be encouraged and which should be expanded to include more developing countries. The adoption of additional conventions and model laws should go hand in hand with training and technical assistance programmes.

35. **Mr. Mubarak** (Egypt) welcomed the adoption of the Model Law on Cross-Border Insolvency, which was acceptable to States with very different legal regimes, and which would certainly promote the rapid growth of international commerce. His delegation would have preferred the Model Law to specify that proceedings involving consumers were outside its scope, in order to protect consumers and to take account of the fact that certain legal systems failed to recognize consumer insolvency. However, the draft Guide to Enactment specified that private individuals having personal, not commercial, debts were outside the scope of the Model Law. His delegation accepted but did not support the provisions of the Model Law whereby recognition of a foreign proceeding must not create a more favourable situation for foreign creditors than for local creditors. It supported article 6 of the Model Law, which provided for public policy exceptions.

36. As for the legislative guide on privately financed infrastructure projects, his delegation was entirely prepared to take part in its elaboration by appointing an expert whose knowledge would be useful to the Secretariat. As in the case of cross-border insolvency, codification work in the area of electronic commerce should produce a model law and should take into account the differing levels of development of national legal regimes.

37. He emphasized the importance of technical assistance and training programmes to developing and least developed countries. Steps should be taken to broaden the range of legal regimes represented on the Commission by ensuring that countries in difficulties participated. He therefore supported the Commission's decision, made at its twenty-eighth session, to recommend to the General Assembly the adoption of a resolution which would include the question of the UNCITRAL Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL in the agenda of the United Nations Pledging Conference for Development Activities.

38. **Ms. Willson** (United States of America) welcomed the adoption of the Model Law on Cross-Border Insolvency. The text produced by the Commission responded to needs flowing from the globalization of economies. In August 1997, the Bankruptcy Law Revision Commission appointed by the United States Congress had recommended the adoption of the UNCITRAL Model Law as amendments to the United States Code. Other States should consider taking similar action.

39. The rules on digital signatures would play a decisive part in electronic commerce. Her delegation supported market solutions along with government-authorized systems.

40. The draft legislative guide on privately financed infrastructure projects was of crucial importance for developing countries. Her delegation looked forward to the regional meetings which would assist the Commission in defining the scope of future work in that field.

41. At its twenty-ninth session, UNCITRAL had invited States, international bodies and the private sector to submit comments on the usefulness of new initiatives pertaining to international transportation law. Her delegation encouraged the various partners to submit their views before the convening of the thirty-first session, in 1998.

42. **Mr. Gray** (Australia) recalled that his country had participated in the work of UNCITRAL since 1966. At the thirtieth session of the Commission, it had played a pivotal role in finalizing the Model Law on Cross-Border Insolvency. It was to be hoped that the model provisions would be adopted and implemented by many States. The problems raised by cross-border insolvency could only be solved at the international level.

43. His delegation paid tribute to UNCITRAL for its work in the area of electronic commerce. The Commission's Working Group had considered in detail the legal issues surrounding digital signatures and certification authorities. His Government had also studied those issues, with the help of an expert group.

44. His delegation welcomed the progress made by UNCITRAL on privately financed infrastructure projects and receivables financing. It also welcomed the work on case law on UNCITRAL texts.

45. The staff of UNCITRAL had demonstrated their skills and commitment. It would be unfortunate if budget cuts and staff reductions affected the capacity of the Commission. It was to be hoped that its work would be more widely publicized and that its contribution would become better known internationally.

46. **Mr. Mirzaee** (Islamic Republic of Iran) said that UNCITRAL had for 30 years played a pivotal role in the harmonization of international trade law. Its model laws and guides were a valuable aid for States. At its thirtieth session, the Commission had adopted the Model Law on Cross-Border Insolvency but had been unable to complete its consideration of the draft Guide to Enactment of the Model

Provisions in domestic legislation. He endorsed the conclusion of the Commission that the final version of the draft Guide should be prepared at the same time as the report of the Secretariat based on the deliberations of the Commission. Moreover, the text of the Model Law and the Guide should be forwarded to Governments at the same time.

47. His delegation welcomed the creation by the Secretariat of a system for collecting and disseminating court decisions and arbitral awards relating to the conventions and model laws of UNCITRAL. The case law on UNCITRAL texts (CLOUT) would help practitioners to understand UNCITRAL texts better and would ensure a uniform interpretation of the rules therein.

48. **Ms. Rao** (Canada) urged all States to adopt legislation based on the Model Law on Cross-Border Insolvency. She added that initiatives were under way in her country, at both the federal and provincial levels, to draft legislation based on the Model Law on Electronic Commerce. Her delegation looked forward with interest to the session which the Working Group on International Contract Practices would be devoting to the development of rules for assignment in receivables financing.

49. **Mr. Belcaid** (Morocco) welcomed the adoption of the Model Law on Cross-border Insolvency. However, the Model Law could in no way be construed as an end in itself. Rather, it should be seen as a tool for evaluating the applicability of the treaty which, in the view of his delegation, would have to be adopted in due course and which would provide a restricting code of conduct for States freely choosing to abide by it.

50. Privately financed infrastructure projects were of great interest to the developing countries. His delegation was pleased that the Commission had begun discussions on the structure of the draft legislative guide.

51. He noted with satisfaction the efforts made by the Working Group on Electronic Commerce. He was certainly in favour of preparing uniform rules on digital signatures and certification authorities.

52. The training activities and technical assistance provided by UNCITRAL were particularly useful to the developing countries. His delegation therefore considered it important that States should increase their contributions to the Trust Fund for Symposia.

53. **Mr. Sung Kyu Lee** (Republic of Korea) said that the rapid expansion of international trade over the past 10 years required the creation of a universal legal framework. He was pleased that UNCITRAL had been tackling a number of substantive issues. The rules of commerce grew out of the customs of each country. It was therefore not surprising that some delegations should be bold while others were conservative. However, those differences would have to be overcome if it was considered desirable to establish international norms.

54. He welcomed the adoption of the Model Law on Cross-Border Insolvency, which he was sure would be very useful for drafting domestic laws.

55. With regard to privately financed infrastructure projects, he said that the approach taken appeared appropriate and the draft chapters well organized. It should be possible to achieve a satisfactory result.

56. Lastly, he commended UNCITRAL for its outstanding achievements in such fields as electronic commerce and assignment in receivables financing.

57. **Mr. Bossa** (Chairman of the United Nations Commission on International Trade Law) thanked delegations for their interest in the work of UNCITRAL and expressed the hope that their Governments would apply the new Model Law. With regard to the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, it would be desirable for Member States to indicate whether they intended to accede to it.

58. He took note of the request by several delegations that the UNCITRAL secretariat should provide greater support for the drafting of national laws. As for the 1958 New York Convention, Member States which had not yet done so were urged to reply to the questionnaire without further delay.

Organization of work

59. **The Chairman** announced that the Chairman of the Group of Latin American Countries had proposed that Ms. Flores (Mexico) should be appointed Chairman of the Working Group on the Decade of International Law. If he heard no objection, he would take it that the Committee wished to elect Ms. Flores Chairman of the Working Group.

60. It was so decided.

The meeting rose at 5.05 p.m.